

Application No.: 08/765,695

Docket No.: HO-P01525US0

REMARKS

Claims 36 and 59-63, 65-70 are pending. Previously withdrawn claims 53-57 have been canceled without prejudice and without acquiescence. Claim 64 has been canceled without prejudice and without acquiescence. Claims 65-70 were added previously, but were not entered. Support for claims 65-70 can be found in the original claims. Claim 36 and claim 70 have been amended without prejudice and without acquiescence. Applicants assert that the amendments were discussed with the Examiner and the Examiner indicated that the claims would be in condition for allowance. Applicants reserve the right to file a divisional and/or continuation application to any canceled or withdrawn claims. No new matter has been added.

The issues outstanding in this application are as follows:

- Claims 36 and 58-64 have been rejected under 35 U.S.C. § 112 first paragraph as allegedly lacking adequate written description.
- Claims 36 and 58-63 have been rejected under 35 U.S.C. § 112 first paragraph as allegedly lacking adequate written description.
- Claims 36 and 58-63 have been rejected under 35 U.S.C. § 112 second paragraph as being indefinite.

Applicants respectfully traverse the outstanding rejections, and Applicants respectfully request reconsideration and withdrawal thereof in light of the amendments and remarks contained herein.

I. 35 U.S.C. 112, first paragraph

A. Claims 36 and 58-64

Claims 36 and 58-64 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which was not described in the specification. The Examiner states that there is no support in the specification as originally filed for the

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recitation of "at least one of the following substitutions have been made." Applicants traverse.

The objective standard for determining compliance with the written description requirement, is "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed." *In re Gosteli*, 872 F.2d 1008, 10 USPQ2d 1614 (Fed. Cir. 1989).

Applicants assert that the term "at least one of the following substitutions have been made" would be understood by those of skill in the art and thus meets written description. However, in order to advance prosecution of this application, Applicants have amended claim 36 without prejudice and without acquiescence to recite "one or more of the following substitutions have been made," which is clearly described in the original specification, for example page 5, lines 20-23. Thus, in light this amendment, Applicants respectfully request that the rejection be withdrawn.

B. Claims 36 and 58-63

Claims 36 and 58-63 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which was not described in the specification. The Examiner states that there is no support in the specification as originally filed for the recitation of "corresponding residues in other superantigens." Applicants traverse.

However, without agreeing to the substance of the Examiner's rejection, and in order to expedite the passage of this application to issue, Applicants have amended claim 36 without prejudice and without acquiescence to remove the language to which the Examiner objects. Applicants reserve the right to file continuation applications on any canceled subject matter. Thus, in light this amendment, Applicants respectfully request that the rejection be withdrawn.

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II. 35 U.S.C. 112, second paragraph

Claims 36 and 58-63 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. The Examiner states that the recitation of "corresponding residues in other superantigens" is unclear. Applicants traverse.

However, without agreeing to the substance of the Examiner's rejection, and in order to expedite the passage of this application to issue, Applicants have amended claim 36 without prejudice and without acquiescence to remove the language to which the Examiner objects. Applicants reserve the right to file continuation applications on any canceled subject matter. Thus, in light of this amendment, Applicants respectfully request that the rejection be withdrawn.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P01525US0 from which the undersigned is authorized to draw.

Dated: March 1, 2004

Respectfully submitted,

By 

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